



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 20, 1995

Ms. Kay Ellen Pollack  
Assistant City Attorney  
City of Dallas  
City Hall  
Dallas, Texas 75201

OR95-1098

Dear Ms. Pollack:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 32549.

The Dallas Police Department received a request under the Open Records Act ("act") for the complete internal affairs investigation into a complaint of police brutality. You request on behalf of the City of Dallas and the Dallas Police Department that this information not be made available under the act.

You argue that hand-written medical reports from the Dallas County Hospital District are confidential information excepted from disclosure under Section 552.101 of the Government Code. We have examined the medical records and agree that they are excepted from disclosure pursuant to section 552.101 of the Government Code and article 4495b, section 5.08, which provides for the confidentiality of

[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician.

...

V.T.C.S. art. 4495b, § 5.08(b). *See* Open Records Decision No. 546 (1990). The report of the internal investigation of the complaint includes two brief references to information from the Dallas County Hospital District medical reports. These references, found on page 6 of the report, are also excepted from disclosure by section 552.101 and we have marked them accordingly.

You next claim that Internal Affairs documents and tapes prepared in investigating the complaint should be excepted from disclosure under section 552.103 of the Government Code, the litigation exception. You do not explain why you believe that litigation or settlement negotiations might ensue or state why this information is related to the anticipated litigation. You merely recite the part of section 552.103 that excepts information

relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision . . . may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party . . . .

Gov't Code § 552.103(a). Section 552.103(a) requires concrete evidence that litigation is realistically contemplated. Attorney General Opinion JM-266 (1984) at 4; Open Records Decision No. 328 (1982). You have not provided any evidence that litigation is reasonably anticipated. Thus, you have not shown that the Internal Affairs documents are excepted from disclosure by section 552.103 and you have raised no other exception. Accordingly, the Internal Affairs documents must be made available to the requestor, with the exception of the references to information from medical records that we have already mentioned.

You finally claim that the "supplemental police reports" are records of a law enforcement agency relating to the investigation of a pending criminal case that should be protected from disclosure by section 552.108 of the Government Code. This provision excepts

(a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . .

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . .

Gov't Code § 552.108. You state that release of the requested materials while the investigation is pending may compromise the investigation, referring us to Open Records Decision No. 127 (1976) in support of your argument.


Section 552.108 excepts from required public disclosure all information related to a case under active investigation, except certain basic information deemed public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559

(Tex. 1976), and catalogued in Open Records Decision No. 127 (1976).<sup>1</sup> We have attached a list showing the items of information available to the public as "basic information" and those protected by section 552.108 during the criminal investigation.

You have submitted supplemental reports of two arrests. These "supplemental reports" appear to cover the same information as the "offense reports" discussed in Open Records Decision No. 127 (1976). Upon examining the reports, we find only a few brief phrases that may be withheld pursuant to section 552.108 during the pendency of a criminal investigation. We have marked the portions that may be withheld.<sup>2</sup> You must release the remainder of the supplemental reports to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Susan L. Garrison  
Assistant Attorney General  
Open Records Division

SLG/rho

Ref.: ID# 32549

Enclosures: Marked documents

cc: Ms. Donya Witherspoon  
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(w/o enclosures)

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<sup>1</sup>The basic information that the court deemed open to the public appeared on the first page of the offense reports at issue in *Houston Chronicle Publishing Co. v. City of Houston*.

<sup>2</sup>Our markings indicate the kind of information that we believe may be excepted by referring to the attached list of information protected by section 552.108 during pendency of a criminal investigation.